October 9, 2003

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
ET Docket No. 95-18; WTB Docket 00-258

Dear Ms. Dortch:

On September 5, 2003 the Commission suspended for 60 days, until November 4, 2003, the expiration date for the initial two-year mandatory negotiation period for Phase 1 of the 2 GHz band relocation plan for Broadcast Auxiliary Service (BAS).[1] Recent Commission decisions reallocated 30 MHz of the 2 GHz band that had been reserved for MSS, but as yet, the Commission has not adopted any modifications to the existing BAS and FS relocation rules that may be necessary in light of these decisions. BAS incumbents have asked the Commission to require a single phase relocation for all reallocated spectrum between 1990-2025 MHz, which would require digital conversion for most incumbents, and to adopt an accelerated relocation of incumbents in the top 100 broadcast markets, rather than the top 30 now contemplated under existing FCC rules.

ICO makes no comment at this time on a rule change that would implement a single phase relocation process. ICO, however, strongly objects to those proposals that would require ICO to relocate all incumbents in at least the top 100 broadcast markets rather than the existing plan, which anticipates relocation for only the top 30 markets

[1] *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, 18 FCC Rcd 18353 (OET 2003). BAS spectrum in the 2 GHz band is also authorized for use by cable television relay services ("CARS") and local television transmission services ("LTTS"). For purposes of the 2 GHz BAS relocation plan, the Commission typically refers to BAS, CARS, and LTTS collectively as BAS. *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, 15 FCC Rcd 12315, ¶ 10 n.24 (2000) ("*Second R&O*").

prior to service commencement. For the reasons discussed below, the onerous economic burden that would be imposed upon ICO if 100 markets must be relocated before it begins commercial operations could prevent MSS entry into the market.

Any attempt by the Commission to impose such a significant change upon new entrants at this late date would be arbitrary and capricious without an accurate accounting of the size of the relocation task and an effort to fairly balance the burdens placed upon new entrants and incumbents. The scope of this task has not been quantified or even discussed in the record of this proceeding. The 2 GHz BAS relocation process will be chaotic, regardless of whether 30 markets, 50 markets or 100 markets are cleared, if the Commission ignores serious outstanding cost and implementation issues. Accordingly, ICO urges the Commission to ensure that any such rule modifications be based on an accurate and detailed record of the number and identity of incumbent 2 GHz licensees, and of the 2 GHz radios currently in use that may require upgrades or replacement under the relocation rules, before any decisions are made on how many markets must be relocated as an initial matter.

Based upon its separate informal discussions with major manufacturers of 2 GHz-capable digital BAS equipment, ICO's cost estimates for converting existing BAS analog operations to digital operations are similar to those submitted by the Society of Broadcast Engineers in its *ex parte* comment filed on April 3, 2003.[2] These discussions indicate that the cost of new 2 GHz digital video transmitters ranges from $46,000 to $50,600, depending upon the manufacturer and the model selected. However, for the few hundred digital-capable radios currently used in the field by BAS operators, the digital conversion cost would be lower. These radios can be converted from analog-FM to digital video by inserting a digital encoder module card, in lieu of buying a radio already equipped with digital video. The cost of a digital encoder module ranges from $28,000 to $30,600 per radio, still a significant sum for a single conversion.

BAS receive sites would need to be similarly retooled. The latest generation of digital receivers for BAS receive sites, including those placed in mobile electronic news gathering (ENG) units, are priced in the range of $19,000 to $21,600. As with digital-capable transmitters, if only the digital decoder/demodulator is required to convert an existing digital-capable BAS receiver, the conversion cost would range from $5,500 to $5,600.

Although ICO has relied on publicly available information to estimate the number of BAS 2 GHz radios that may need to be replaced, that information may not provide an

[2] See April 3, 2003 SBE Letter from Chris Imlay to Ira Keltz and Alan Scrime, ("SBE Letter") ET Docket 95-18, IB Docket 01-185, and WTB Docket 00-258.

accurate or comprehensive listing of all BAS 2 GHz radios in the U.S. For example, the Broadcast Industry Association (BIA) Television Yearbook[3] estimates that there are several thousand 2 GHz BAS transmitters and close to a thousand 2 GHz BAS receivers in the top 30 markets.[4] Further research, however, indicates that these estimates are not based on a comprehensive accounting of 2 GHz BAS operations and likely underestimate the number of 2 GHz BAS radios in use in the U.S.

Specifically, the BIA Television Yearbook is a market survey of independent and network-affiliated broadcast stations, but does not include many other types of BAS operations in the 2 GHz band. BAS installations not listed in this survey include cable news channels (e.g., Cable Channel 8 in Washington, D.C.) and other all-news television stations (e.g., the New England News Network). Major television networks also maintain significant fleets of 2 GHz microwave trucks — separate from those trucks used by the local network-affiliated stations — in order to be prepared for events such as election coverage, major storms or other stories of broader regional or national interest. Fleets of 2 GHz vans and portable receivers are generally located in cities with national network news bureaus, such as Washington, D.C. and New York City.

Moreover, many independent BAS operators own their own mobile vans, which they lease to local broadcast stations, and operate both ENG and satellite uplink trucks. Local LTTS licensees, operate under their own call signs to provide video production services, and generally offer itinerant BAS service in the 2 GHz band. Additionally, CARS licensees may require relocation.[5] There is also considerable usage of 2 GHz radios for fixed Studio-Transmitter Links (STL), separate from radios used for transmissions from ENG vans to fixed receive sites. These links are used to transmit video from certain remote receive sites back to the TV station studio or VHF/UHF Broadcast transmitter site. Although these units use only one 17 MHz-wide fixed BAS channel, they would nevertheless require new radios or upgrades to enable compression and digitization if they are to operate in new 12 MHz-wide BAS channels.

---

[3] *Television Yearbook 2003*, BIA Financial Network Inc. (2003).

[4] In October 2000, ICO sent questionnaires to over 450 television stations in an attempt to quantify the number and type of equipment in use in the top 30 DMA/TV markets. To date, fewer than 40% of those stations have responded. The responses vary widely in the amount of detail given regarding their 2 GHz BAS operations.

[5] *See Second R&O*, ¶ 10 n.24 ("…we will refer to these services [LTTS, CARS and BAS] collectively as BAS, and *all proposals and decisions apply to CARS and LTTS* in the band, as well as to BAS.")(emphasis added).

Accordingly, lacking additional information from more comprehensive and accurate surveys by frequency coordinators or other responsible entities active in the BAS field,[6] ICO believes that the amount of 2 GHz BAS equipment that may require upgrades or replacement may be seriously underestimated. The factors outlined above suggest that significant effort is required to accurately determine the scope of the 2 GHz relocation task. The Commission should make an effort to ensure accuracy in this matter.

A decision based on speculative estimates of the type and number of 2 GHz BAS units in the field could arbitrarily subject new entrants to enormous upgrade or replacement costs. Miscalculations in this area would conservatively range in the tens of millions of dollars. These figures represent significant sums for all parties concerned, and would, at a minimum, delay or prevent launch of new MSS systems.

The Commission repeatedly has recognized that MSS systems serve a vital role in protecting the public in times of emergency and disaster, and represent one of the best hopes of providing critical telecommunications services to rural and underserved areas. For more than a decade, the Commission has developed allocation and service rules to foster deployment of competitive, next-generation 2 GHz MSS systems.

Having finally issued licenses for these systems, which are expected to commence service within the next four years, the Commission should not adopt any radical changes to the existing 2 GHz relocation plan that would impose unreasonable cost burdens on new MSS entrants and jeopardize their ability to introduce innovative services to the public. ICO accordingly urges the Commission to develop a complete factual record on various 2 GHz relocation issues, including the extent of BAS relocation costs and the allocation of those costs among new entrants, before reaching any final decisions that could irreparably harm the commercial viability of 2 GHz MSS.

[6] A list of local and regional frequency coordinators was available at the website of the Society of Broadcast Engineers, www.sbe.org, as of October 8, 2003.

In accordance with section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed.

Very truly yours,

/s/ Suzanne Hutchings

Suzanne Hutchings

cc: Ed Thomas
Bruce Franca
Julius Knapp
Geri Matise
Bruce Romano
Alan Scrime
Gary Thayer
Jamison Prime
Breck Blalock
Howard Griboff
Paul Locke